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To: Ms. Sheri Young
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From: Kitigan Zibi Anishinabeg First Nation
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Date: May 31 2017

Regarding:
National Energy Board Energy East and Eastern Mainline draft List of Issues and draft Factors and Scope of the Factors for the Environmental Assessments

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To:
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File No. OF-Fac-Oil-E266-2014-01 02

5 pages

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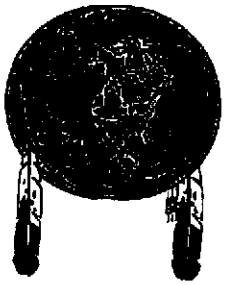
REGULATORY AFFAIRS



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Kitigan Zibi, May 31 2017

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IN THE MATTER OF:

Energy East Pipeline Ltd. and TransCanada PipeLines Limited (collectively, the Applicants)

Energy East Project and Asset Transfer (Energy East), and Eastern Mainline Project (Eastern Mainline) [collectively, the Projects]

Comment period on the draft Lists of Issues and draft Factors and Scope of the Factors for the Environmental Assessments pursuant to the Canadian Environmental Assessment Act, 2012 (CEAA 2012) [EA Factors Documents]

Ms. Young,

This is a response to the letter from the National Energy Board to all interested parties, dated May 10, 2017, concerning the following four documents:

1. Draft List of Issues for Energy East
2. Draft EA Factors Document for Energy East
3. Draft List of Issues for Eastern Mainline
4. Draft EA Factors Document for Eastern Mainline

In this letter, the National Energy Board (NEB) requests comments on the above documents, including views on whether the draft Lists of Issues and EA Factors Documents cover all matters relevant to the NEB's review of the project applications.

The Kitigan Zibi Anishinabeg First Nation community presents these comments in regards to the NEB's draft Lists of Issues and EA Factors Documents related to the proposed Energy East and Eastern Mainline Projects. Kitigan Zibi wishes to affirm that the proposed pipeline route runs through ancestral Algonquin Anishinaabe lands that were never surrendered, and for which we have never signed a treaty. We continue to assert our full rights to our land and seek respect from all those that reside in and/or use these lands. Furthermore, these comments are submitted without prejudice to our collective asserted rights. Finally, these comments are not intended to provide an inventory of our Algonquin Anishinaabe values in regards to the targeted territory, and should not be used or viewed as our all-encompassing position.

1. Draft List of Issues for Energy East

- Technical, safety, and security considerations (Section 5, page 4):
  - The line, "The consequences of any release, including geographical extent," should be expanded to include consideration of the consequences for natural ecosystems. TransCanada's previous risk assessments have shown a bias towards consideration of consequences for human infrastructure only.
- Aboriginal considerations (Section 5, page 4):
  - The line, "The adequacy of the Applicants' engagement with Aboriginal peoples," should be expanded to include "as agreed upon in conjunction with Aboriginal peoples" or similar language. The current wording is too restrictive and one-sided.
  - In the line, "The integration of local and traditional knowledge, ~~where appropriate~~, into the design of the Project," the bolded wording is too restrictive and should be removed.
  - A provision should be added for the consideration of cumulative impacts on First Nation territory, as well as interactions between these impacts.
- Environmental and socio-economic considerations (Section 10, page 5):
  - This section should be split in two to allow for the proper and appropriate weighting of each issue separately.
  - The section regarding "[t]he potential effects of the Project on the environment" should be expanded to include consideration of interactions between these potential effects.
- Additional issues that the Board is considering including in its review of Energy East (Section C, pages 6-8):
  - The NEB should commit to including in its review the consideration of all four of the Items mentioned in this section.
  - In light of this commitment, all instances of the word "might" should be removed from section C and replaced with the word "will".
  - The inclusion of Item 1 ("The potential impacts of the Project on Canada's greenhouse gas (GHG) emissions") in this section introduces an element of uncertainty in the NEB's apparent willingness to consider the potential effects of the Project on "[t]he atmosphere, including greenhouse gas

emissions" as stated in Section 10, page 5. This uncertainty is not acceptable, and the NEB should clarify its objectives regarding this topic.

2. Draft EA Factors Document for Energy East

- In light of the recent federal review of the *Canadian Environmental Assessment Act. 2012* (CEAA 2012), there should not by any form of Environmental Assessment conducted for the Energy East and Eastern Mainline Projects until the federal review of CEAA 2012 is complete, including any amendments to be made to this legislation. At that time the Environmental Assessment of these Projects should proceed under the new legislation and regulations.
- The NEB should integrate the recommendations of the Expert Panel for the Review of Environmental Assessment Processes into its EA Factors Document for Energy East, including the following themes:
  - Shifting from "Environmental Assessment" to "Impact Assessment"
  - Shifting from assessing "significance" to "sustainability"
  - Reflecting *UNDRIP* principles in Impact Assessment
  - Assessing impacts to Aboriginal and Treaty Rights in Impact Assessment
- Factors to be considered in the EA (Section 3, page 2):
  - This section should be expanded to include the consideration of cumulative impacts to the environment, as well as interactions between effects.
  - The "environmental effects" to be considered should include all of the effects on the environment that are listed in Section 10, page 5 of the Draft List of Issues for Energy East.

3. Draft List of Issues for Eastern Mainline

- Technical, safety, and security considerations (Section 3, page 3):
  - The line, "The consequences of any release, including geographical extent," should be expanded to include consideration of the consequences for natural ecosystems. TransCanada's previous risk assessments have shown a bias towards consideration of consequences for human infrastructure only.
- Aboriginal considerations (Section 4, page 3):
  - The line, "The adequacy of the TransCanada's engagement with Aboriginal peoples," should be expanded to include "as agreed upon in conjunction with Aboriginal peoples" or similar language. The current wording is too restrictive and one-sided.
  - In the line, "The integration of local and traditional knowledge, ~~**where appropriate**~~, into the design of the Project," the bolded wording is too restrictive and should be removed.
  - A provision should be added for the consideration of cumulative impacts on First Nation territory, as well as interactions between these impacts.
- Environmental and socio-economic considerations (Section 8, page 4):
  - This section should be split in two to allow for the proper and appropriate weighting of each issue separately.

- The section regarding "[t]he potential effects of the Project on the environment" should be expanded to include consideration of interactions between these potential effects.

- Additional issues that the Board is considering including in its review of Energy East (Section C, pages 5-6):
  - The NEB should commit to including in its review the consideration of both of the Items mentioned in this section.
  - In light of this commitment, all instances of the word "might" should be removed from section C and replaced with the word "will".
  - The inclusion of Item 1 ("The potential impacts of the Project on Canada's greenhouse gas (GHG) emissions") in this section introduces an element of uncertainty in the NEB's apparent willingness to consider the potential effects of the Project on "[t]he atmosphere, including greenhouse gas emissions" as stated in Section 8, page 4. This uncertainty is not acceptable, and the NEB should clarify its objectives regarding this topic.

4. Draft EA Factors Document for Eastern Mainline

- In light of the recent federal review of the *Canadian Environmental Assessment Act. 2012* (CEAA 2012), there should not by any form of Environmental Assessment conducted for the Energy East and Eastern Mainline Projects until the federal review of CEAA 2012 is complete, including any amendments to be made to this legislation. At that time, Environmental Assessments of these Projects should proceed under the new legislation and regulations.
- The NEB should integrate the recommendations of the Expert Panel for the Review of Environmental Assessment Processes into its EA Factors Document for Eastern Mainline, including the following themes:
  - Shifting from "Environmental Assessment" to "Impact Assessment"
  - Shifting from assessing "significance" to "sustainability"
  - Reflecting *UNDRIP* Principles in Impact Assessment
  - Assessing impacts to Aboriginal and Treaty Rights in Impact Assessment
- Factors to be considered in the EA (Section 3, page 2):
  - This section should be expanded to include the consideration of cumulative impacts to the environment, as well as interactions between effects.
  - The "environmental effects" to be considered should include all of effects on the environment listed in Section 8, page 4 of the Draft List of Issues for Eastern Mainline.

To conclude our comments, we wish to state that the NEB's review process of the Energy East and Eastern Mainline Projects does not include adequate consultation of First Nations, and does not reflect the recommendations of the Federal Review of Environmental and Regulatory Processes.

We also wish to reiterate that Kitigan Zibi Anishinabeg never gave up nor sold our ancestral traditional territory. Our territory has never been under any treaty. Following the Tsilhqot'in decision, we also claim aboriginal title to our ancestral lands. This implies the need for our consent for all development projects on our lands.

Please accept my best regards,

P.P. Melissa Ouellet

Jean Guy Whiteduck
Chief of Kitigan Zibi Anishinabeg